

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,
Plaintiff,

v.

TIM HOLOHAN, et al.,
Defendants.

C.A. No. 04-253 ERIE

ORDER

Plaintiff, a prisoner at FCI-McKean has submitted a complaint for filing in this district.

AND NOW, this 19th day of July, 2005,

IT IS HEREBY ORDERED that the United States Marshal is directed to mail a copy of the complaint, notice of lawsuit and request for waiver of service of summons, and waiver and this order to each defendant as directed by plaintiff. Costs shall be advanced by the United States. The defendant is requested to waive service pursuant to Rule 4(d).¹

IT IS FURTHER ORDERED that plaintiff provide the United States Marshal a separate "Process Receipt and Return" form (USM-285) for each defendant (unless he sent properly completed forms to the Clerk with the complaint). If the plaintiff does not have sufficient copies of the form to prepare one for each defendant, he may obtain additional forms from the Clerk of Court. On this form he must give the full name and complete home address of each individual defendant. If plaintiff fails to give the Marshal correct instructions for mailing to any defendant, his claims against that defendant may be dismissed pursuant to Federal Rule of Civil Procedure 4(m). The plaintiff is further advised that no defendant is required to respond to the complaint until he has accepted a copy of the complaint from the Marshal and waived service, or has been served. Therefore, a motion for default cannot properly be filed unless the defendant has failed to file an answer, a motion to dismiss, or a motion for additional time to respond,

1. The Marshal will send the form Notice of Lawsuit and Request for Waiver of Service of Summons to each defendant.

within sixty (60) days after the Marshal's notice has been mailed, if service is waived pursuant to the notice, or twenty (20) days after being served.

IT IS FURTHER ORDERED that plaintiff shall serve upon each defendant or, if appearance has been entered by counsel, upon their attorneys, a copy of every pleading or other document submitted for consideration by the court and shall include on the original document filed with the Clerk of Court a certificate stating the date a true and correct copy of the pleading or document was mailed to each defendant or his counsel. Any pleading or other document received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service shall be disregarded by the court.

IT IS FURTHER ORDERED that plaintiff shall immediately advise the court of any change in address. Failure to do so may result in dismissal for failure to prosecute if the court and other parties are unable to serve pleadings, orders and other documents upon plaintiff.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

S/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
CHEIF UNITED STATES MAGISTRATE JUDGE

cc: United States Marshal

Juan Davila-Bajana, 47580-053
FCI McKean
Post Office Box 8000
Bradford, PA 16701